THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No. 4618 of 2007
Date: 03-10-2007

Between:
Sri V.Raja Goud, President of TCS Society,
Pownoor (V), Jaipur Mandal,
Adilabad District.

Petitioner

And

The Prohibition and Excise Superintendent, Mancherial,
Adilabad District and others

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.4618 of 2007

ORDER:

1. This writ petition has been filed by the President of the Toddy Tappers Cooperative Society, Pownoor village of Jaipur Mandal, Adilabad District, calling in question the validity of the orders passed by the District Collector through his proceedings No.B4/325/2006 dated 29-05-2006 according permission to the 4th and 5th respondents herein for felling toddy/sendhi trees situated in Survey Nos.668/1 and 668/2 of Pownoor village.

2. It is the case of the writ petitioner that Toddy Tappers Cooperative Society of Pownoor comprises

65 members and to enable them to tap the toddy and offer it for sale they were allotted a total of 405 toddy trees and 220 sendhi trees , of them nearly 100 trees are standing on the land situated in Survey Nos.668/1 and 668/2 which land belongs to respondents 4 and 5 herein. Obviously at the time of granting licence in favour of the petitioner society in the year, 2002, respondents 4 and 5 have given their no objection/consent for the trees to be tapped for the toddy. Based upon such a consent the licencee has been allotted these trees. However, respondents 4 and 5 appear to have moved the District Collector on 20-03-2006 soliciting the necessary permission to fell the trees, which permission has been accorded through the impugned order. The learned counsel for the writ petitioner would urge that the District Collector was required to follow the procedure prescribed under Section 24 of the Andhra Pradesh Excise Act, 1968 (in brevity 'the Act') and without following the said procedure, the District Collector has illegally accorded the permission.

3. Per contra, Sri P.Venu Gopal, the learned counsel appearing for respondents 4 and 5 would urge that in terms of Section 27 of the Act, all that is needed is a permission from the Collector or such other officer as may be empowered by the State Government in this regard before undertaking felling of the trees and that Section 27 of the Act did not contain any detailed procedure much less an opportunity of hearing in favour of the Cooperative Society concerned.

4. The learned Government Pleader for Prohibition and Excise would also contend that if any shortage is found in the number of trees available for tapping by a licencee, out of trees allotted to such licencee then additional excise trees may be allotted to make up the shortage on being pointed out by the licencee concerned. Therefore, the learned Government Pleader would contend that the licencee does not suffer any serious prejudice by the permission accorded by the District Collector through the impugned order in favour of respondents 4 and 5 to fell down the excisable trees. It will be relevant to notice Sections 21,24 and 27 of the Act as well as Rule 47 of Andhra Pradesh Excise (Grant of Licence To Sell Toddy, Conditions of Licence and Tapping of Excise Trees) Rules 2007 (in brevity 'the Rules- 2007').

" Section 21:

Excise duty or countervailing duty on excisable articles:-

(1) The Government may, by notification, levy an excise duty on any excisable article manufactured in the State at such rates not exceeding the rates mentioned in the Schedule as may be specified in the notification.

(2) The Government may, by notification, levy a countervailing duty on any excisable article manufactured or produced elsewhere in India and imported into the State at such rate as may be specified in the notification, which may not exceed the rates of excise duty on similar excisable articles levied under sub-section (1).

(3) Different rates may be specified in sub-sections (1) and (2) for different kinds of excisable articles and different modes of levying duties under Section 22.

Section 24:

Owner or other person in possession of excise trees to give intimation of unwillingness to tap excise trees etc:-

(1) Where in any area, a duty under Section 21 is levied, the owner or other person in possession of the excise trees in that area, who is unwilling to have his excise trees tapped or to allow the drawal of toddy there from, shall, before the date notified in this regard by the authority empowered to grant a licence under Section 13, intimate his unwillingness in writing to the said authority. Every such intimation received before the date so notified may be approved by the Commissioner subject to such rules as may be made in this behalf and shall take effect only on and from the date on which it is so approved; and the intimation so approved shall not be revoked during the period of seventeen months from the date so notified.

(2) Where no such intimation is received by the said authority before the date so notified, the licence

applied for under Section 13 may be granted to the person applying therefor;

Section 27:

Prohibition of cutting down or destroying excise trees:-

No person shall without the permission of the Collector or such officer as may be empowered by the Government in this behalf, cut down or destroy any excise trees. Such permission may be given subject to such conditions and on payment of such fees as may be prescribed.

Rule 47 of Rules-2007:- Allotment of Excise trees:-

(1) Every Licensee who sells toddy shall be allotted a specified number of excise trees not less than (30) trees per tapper in terms of dates for tapping and drawing of toddy there from, for supply to his shop;

Provided that in case of allotment of both sendhi and toddy trees to a tapper, conversion formula of 3 toddy trees as being equal to (4) Sendhi trees and one coconut tree as being equal to 2 toddy trees shall be followed for this purpose.

Provided further that it shall be the duty of the Licensee to ascertain as to the availability of trees allotted to the shop and where any shortage in the number of trees available for tapping out of the trees allotted to the shop is noticed by the Prohibition & Excise Superintendent or the Deputy Commissioner as the case may be, he shall allot excise trees to make up the shortage on being pointed out by the Licensee, but no remission of rentals shall be entertained in lieu thereof.

(2) The Licensee shall tap not less than 75% of the trees allotted for the shop regularly. He shall ensure that toddy is available in the shop everyday for sale. If he fails to do so, the Licence shall be liable for cancellation.

(3) Excise trees in excess of the quota shall not ordinarily be allotted during the course of the year. The Collector within the concerned District and Deputy Commissioner of Prohibition & Excise within the Division subject to availability of trees may, in special circumstances, allot extra trees after collecting rate per tree on the extra trees allotted to the Toddy Cooperative Society and Tree for Tappers Scheme subject to a maximum of 160 sendhi trees or 48 toddy trees per member who is actually engaged in tapping."

5. From a perusal of the above provisions of law, it would be clear that only in cases where an excise duty is leviable in terms of Section 21,- such situations are sought to be regulated by the provisions contained in Section 24 of the Act. In the instant case, Section 21 of the Act itself is not attracted because no excisable product is manufactured. It is by a natural process that toddy is formed and it is only permitted to be tapped without anything more being done. Therefore, I do not find any merit in the contention of the learned counsel for the petitioner that the procedure contemplated by Section 24 of the Act is required to be followed prior to according permission for felling the Toddy/Sendhi trees. On the other hand, all that Section 27 had provided for is that no person shall without the permission of the Collector or such other Officer as may be empowered by the State Government in this behalf cut down or destroy any excise trees. Such permission can be accorded subject to certain conditions that may be prescribed. Therefore, for according the permission to fell down the trees in question as solicited by respondents 4 and 5 no elaborate procedure is either contemplated or is necessary . All that one is needed to demonstrate to the competent authority is that the land in question and consequently the trees standing thereon are owned by the individual concerned. Upon such satisfaction, the permission for felling such trees can be accorded. By the very nature of the permission to be accorded as contemplated under Section 27 of the Act , the question of elaborate enquiry or providing for an opportunity of hearing to a toddy tapper or toddy tapper cooperative society or the licensee concerned, does not arise. It is a matter exclusively between the land owner and the State's authorities. The learned Assistant Government Pleader is right in pointing out that the licensee does not suffer any serious prejudice due to the permission accorded by the District Collector inasmuch as the shortage in the number of trees made available for tapping by the licensee can be made good by

way of additional allotment of trees. Therefore, the writ petitioner is not put to any prejudice by the permission accorded by the District Collector in this case. Additionally, the licence granted in favour of the cooperative society which was initially valid up to 31-03-2007 and which was further extended upto 30-09-2007 itself, has expired as of now. In terms of Rules- 2007, the licences are liable to be granted afresh. May be till such time licences are granted afresh, the existing licensees may be permitted to continue to tap the trees and then offer for sale the toddy so generated. But since there is a provision now to allot new trees to make up the shortfall in favour of the total number of trees allotted in favour of the cooperative society, it is open to the petitioner to seek allotment of new trees in the vicinity to make up the short fall that might arise due to the permission accorded by the District Collector in favour of respondents 4 and 5. Respondents 4 and 5 will ensure that they will not be felling more number excisable trees than the permission for which it was accorded. The first respondent-Prohibition and Excise Superintendent will consider and pass orders of additional allotment of the trees in favour of the licensee at the earliest, at any rate, within a period of 15 days from the date of receipt of such a requisition.

6. With this, the writ petition stands disposed of. No order as to costs.

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NOOTY RAMAMOHANA RAO,J

03-10-2007
Stp